

# BENTHAM IMF



## Code of Best Practices

Adopted November 2013

# SETTING THE STANDARD IN A RAPIDLY EVOLVING INDUSTRY

This Code sets out Bentham IMF’s litigation funding best practices. In addition to guiding our company’s actions, it may also provide other commercial litigation funders with a suitable model to adopt or tailor for their own purposes.

## Four Founding Principles:

<b>FAIRNESS</b>	<b>TRANSPARENCY</b>
Ensuring that the commercial litigation finance investment process is characterized by good faith and fair dealing among claimants, counsel and the public, while providing increased access to justice.	Establishing clear expectations on matters of importance to all stakeholders and encouraging the education of the judiciary, the bar, defendants and the general public about commercial litigation finance.
<b>ACCOUNTABILITY</b>	<b>RESPONSIBILITY</b>
Clarifying the respective roles of stakeholders, and seeking alignment of their respective interests.	Requiring and encouraging compliance with existing legal and ethical rules that reflect the values of the legal system.

## **Litigation Funding Agreement Best Practices**

### **TRANSPARENCY**

All litigation funding agreements (“LFAs”) must be in writing, set out the amount of funding to be provided, indicate the return to the Funder, and be written in as clear and concise manner as possible.

### **INDEPENDENT COUNSEL**

LFAs must provide a recommendation that the Claimant obtain independent legal advice as to the meaning and effect of the LFA, and shall state that the Claimant acknowledges having read and understood the recommendation.

### **CLAIM MANAGEMENT**

LFAs shall state plainly whether and in what circumstances the Funder may:

- a. manage the Claimant’s litigation expenses; and
- b. receive notice of and provide input on any settlement demand and/or offer, and any response.

### **SETTLEMENT**

LFAs shall state plainly whether and in what circumstances the Funder may be entitled to participate in the Claimant’s settlement decisions. For example, subject to agreement between the parties, the LFA may provide that:

- a. the Claimant, counsel and the Funder shall consult in good faith as to the appropriate course of action to take in connection with all settlement demands or offers; and
- b. if the Funder reasonably believes that the Claimant is acting in bad faith in deciding whether to accept or reject a settlement offer and the Funder and the Claimant are unable to resolve their differences about this after consultation, then either of them may refer their differences to an independent arbitrator for expedited resolution, whose decision shall be final and binding.

### **TERMINATION**

LFAs shall state plainly whether and in what circumstances the Funder may terminate the LFA and the consequences of such termination on funding and returns. If it does so permit, the document may provide that such termination is permissible when:

- a. the Funder reasonably determines that the anticipated proceeds of the litigation will be insufficient to pay the Funder’s returns;
- b. the Claimant breaches the LFA; or
- c. the Claimant’s counsel withdraws or seeks to withdraw from the engagement.

### **DISPUTE RESOLUTION**

LFAs must include a fair, transparent and independent process for resolving disputes between the parties to the LFA.

## **Best Practices for Engaging with Claimants and Claimants' Attorneys**

### **CONFIDENTIALITY**

The Funder shall observe the confidentiality and/or privileged nature of all information and documentation relating to the Claimant's dispute to the extent that the law permits, and subject to the terms of any confidentiality or non-disclosure agreement agreed between the Funder and the Claimant.

### **INTEGRITY**

The Funder shall not make false or misleading statements about its products or services.

### **CONFLICTS**

The Funder will comply with its Conflicts Policy.

### **INVESTMENT**

The Funder shall not knowingly allow an attorney or law firm representing a Claimant to invest in the Funder.

### **PROFESSIONAL DUTIES**

The Funder shall not induce a Claimant's attorneys to breach their professional duties.

### **LEGAL ADVICE**

The Funder shall not provide any legal advice or legal services to a Claimant.

### **REFERRAL FEES**

The Funder shall not pay referral fees to attorneys who refer potential clients.

## **Best Practices for Engaging with the Public**

### **COMMUNITY EDUCATION**

The Funder shall seek to educate the judiciary, the bar and the general public about the benefits of commercial litigation finance.

### **PRO BONO**

The Funder shall devote executive time and resources to pro bono projects for those unable to pay for their own legal services.

## **Best Practices Relating to Financial Strength**

### **CAPITAL RESERVES**

At all times, the Funder shall maintain sufficient financial resources to meet its obligations to fund all disputes they have agreed to fund, and in particular shall maintain at all times the ability to:

- a. pay all accrued funding obligations under all current LFAs; and
- b. pay all debts as and when they become due and payable.